

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL

No. 131

**Introduced by Senator Gaines
(Principal coauthor: Senator Calderon)**

January 27, 2011

An act to amend Section 1774 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Gaines. Insurance: surplus line brokers: statement of business transacted.

Existing law requires, on or before the first day of March of each year, the surplus line broker to file with the Insurance Commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. "Business done" or "business transacted" under a surplus line broker's license means all insurance regarding which that surplus line broker is required to file a confidential written report with the commissioner or the commissioner's designee, as provided. Existing law further provides that if 2 or more persons licensed as surplus line brokers are involved in placing an insurance policy, only the one responsible for negotiating, effecting the placement, remitting the premium to the nonadmitted insurer to its representatives, and filing the confidential written report is considered transacting under his or her surplus line broker's license.

~~This bill would instead require that when 2 or more persons licensed as surplus line brokers are involved in placing an insurance policy only the one who is responsible for filing the confidential written report shall be considered transacting business and only one licensed surplus line broker shall include the policy in his or her sworn statement, as specified.~~

~~The bill would also provide that the surplus line broker who is required to include the policy in his or her sworn statement is either the one who is responsible for filing the confidential written report, or the one who is delegated the responsibility for filing the report pursuant to a written agreement between those two surplus line brokers, as provided.~~

This bill would specify that the sworn statement filing requirements apply to surplus line brokers placing business for a home state insured. The bill would require that the information in the sworn statement be expanded to include the total amount of gross premium, the total gross premium for single state risks where 100% of the premium is attributable to risks in California, and for multistate risks, the percentage of gross premium allocated to California and each other state. The bill would require that the sworn statement filing also apply to a home state insured that directly procures insurance with a nonadmitted insurer. The bill would authorize the commissioner to waive or modify any of the forgoing requirements by public notice published on the department's Internet Web site.

The bill would change the definition of "business done" or "business transacted" to mean all insurance business conducted by a surplus line broker for a home state insured or directly procured by the home state insured. The bill would require that when 2 or more licensed surplus line brokers are involved in placing a policy, only the one responsible for filing the confidential written report, as specified, would be considered transacting business for tax purposes, and only one licensed surplus broker would be required to include the policy in his or her sworn statement. The surplus line broker required to include the policy in his or her sworn statement would be either the one responsible for negotiating, effecting the placement, remitting the premium to the nonadmitted insurer or its representatives, and filing the confidential written report, or the one surplus line broker delegated the responsibility for the filing the confidential written report pursuant to a written agreement, as provided.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1774 of the Insurance Code is amended to read:

1774. (a) (1) On or before the first day of March of each year the surplus line broker, placing business for a home state insured, shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. ~~Such~~ The statement shall contain an account of the business done by the surplus line broker placing business for a home state insured for the prior year, and shall include (A) the total amount of gross premium, (B) the total gross premium for single state risks where 100 percent of the premium is attributable to risks in California, and (C) for multistate risks, the percentage of gross premium allocated to California and each other state. The commissioner may waive or modify any of the forgoing requirements by issuance of a notice published on the department's Internet Web site.

(2) On or before the first day of March of each year, the home state insured that directly procures insurance pursuant to Section 1760 shall file with the commissioner a sworn statement of all business done during the last preceding calendar year. That statement shall contain an account of the insurance directly procured by the home state insured pursuant to Section 1760 for the prior year, and shall include (A) the total amount of premium, (B) the total premium for single state risks where 100 percent of the premium is attributable to risks in California, and (C) for multistate risks, the percentage of premium allocated to California and each other state. The commissioner may waive or modify any of the forgoing requirements by issuance of a notice published on the department's Internet Web site.

(b) For purposes of this chapter, "business done" or "business transacted" ~~under a surplus line broker's license~~ means all insurance ~~regarding which that surplus line broker is required to file a confidential written report with the commissioner or the commissioner's designee pursuant to subdivision (a) of Section 1763~~ business conducted by the surplus line broker for a home state insured or directly procured by the home state insured. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for negotiating,

1 ~~effecting the placement, remitting the premium to the nonadmitted~~
2 ~~insurer or its representatives and filing the confidential written~~
3 ~~report pursuant to subdivision (a) of Section 1763, shall be~~
4 ~~considered transacting under his or her surplus line broker's license.~~
5 *business for tax purposes and then only one licensed surplus line*
6 *broker shall include the policy in his or her sworn statement. The*
7 *surplus line broker who is required to include the policy in his or*
8 *her own statement is either (1) the one who is responsible for*
9 *negotiating, effecting the placement, remitting the premium to the*
10 *nonadmitted insurer or its representatives, and filing the*
11 *confidential written report pursuant to subdivision (a) of Section*
12 *1763, or (2) the one surplus line broker who is delegated the*
13 *responsibility for the filing of the confidential written report*
14 *pursuant to subdivision (a) of Section 1763 pursuant to a written*
15 *agreement that is (A) by and among the surplus line brokers*
16 *referenced in paragraph (1) and this paragraph involved in the*
17 *transaction, (B) signed by the surplus line brokers referenced in*
18 *paragraph (1) and this paragraph involved in the transaction, and*
19 *(C) provides by its terms that the agreement shall be made*
20 *available to the commissioner or his or her designee, upon request.*

21 (c) The date on which the surplus line broker transacting a policy
22 prepares a bill or invoice for payment of all or part of the premiums
23 due, shall be considered the date on which that business was done
24 or transacted, subject to paragraph (d). This date shall be shown
25 on the face of the bill or invoice and shall be referred to as the
26 “invoice date.”

27 (d) (1) The invoice date shall be no more than 60 days after the
28 policy effective date and no more than 60 days after the insurance
29 was placed with a nonadmitted insurer, except as provided in
30 paragraph (2) of this section.

31 (2) For purposes of this chapter, the amount of gross premium
32 to be reported, if premiums are billed and payable in installments,
33 shall be the amount of the installment premium, provided the
34 amount and due date of each installment, or the basis for
35 determining each installment, is identifiable in the policy or an
36 endorsement, and either of the following conditions is satisfied:

37 (A) Installments under the policy are not billed more frequently
38 than once per month.

39 (B) If more than one installment is billed in any month, the
40 commissioner determines, in his or her discretion, that the

installment billing method used does not unduly burden the commissioner's ability to accurately determine the amount of premium paid by the insured.

(3) If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, and is placed on or before July 20, 2011, then the policy shall be considered to be business done by the surplus line broker as of the effective date. If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, then the policy shall be considered to be business done by the home state insured who directly procures policies as of the effective date. Cancellations or endorsements shall be business done on the same date as the policy that is being cancelled or endorsed, if that policy effective date is on or before July 20, 2011. Installment premiums, as referenced in paragraph (2), shall be business done on the date of the most recent invoice issued on or before July 20, 2011, that included premium tax charges. This paragraph is enacted to address the July 21, 2011, effective date of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Public Law 111-203), and shall remain in effect only until October 18, 2012.

SECTION 1. ~~Section 1774 of the Insurance Code is amended to read:~~

~~1774. (a) On or before the first day of March of each year, the surplus line broker shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. That statement shall contain an account of the business done by the surplus line broker for the prior year.~~

~~(b) For purposes of this chapter, "business done" or "business transacted" under a surplus line broker's license means all insurance regarding which that surplus line broker is required to file a confidential written report with the commissioner or the commissioner's designee pursuant to subdivision (a) of Section 1763. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for filing the confidential written report pursuant to subdivision (a) of Section 1763 shall be considered transacting business and then only one licensed surplus line broker shall include the policy in his or her sworn statement. The surplus line broker who is required~~

1 to include the policy in his or her own statement is either (1) the
2 one who is responsible for negotiating, effecting the placement,
3 remitting the premium to the nonadmitted insurer or its
4 representatives, and filing the confidential written report pursuant
5 to subdivision (a) of Section 1763, or (2) the one surplus line broker
6 who is delegated the responsibility for the filing of the confidential
7 written report pursuant to subdivision (a) of Section 1763 pursuant
8 to a written agreement that is (A) by and among the surplus line
9 brokers referenced in (1) and (2) involved in the transaction, (B)
10 signed by the surplus line brokers referenced in (1) and (2) involved
11 in the transaction, and (C) provides by its terms that the agreement
12 shall be made available to the commissioner or his or her designee,
13 upon request.

14 (e) The date on which the surplus line broker transacting a policy
15 prepares a bill or invoice for payment of all or part of the premiums
16 due, shall be considered the date on which that business was done
17 or transacted, subject to paragraph (d). This date shall be shown
18 on the face of the bill or invoice and shall be referred to as the
19 “invoice date.”

20 (d) (1) The invoice date shall be no more than 60 days after the
21 policy effective date and no more than 60 days after the insurance
22 was placed with a nonadmitted insurer, except as provided in
23 paragraph (2) of this section.

24 (2) For purposes of this chapter, the amount of gross premium
25 to be reported, if premiums are billed and payable in installments,
26 shall be the amount of the installment premium, provided the
27 amount and due date of each installment, or the basis for
28 determining each installment, is identifiable in the policy or an
29 endorsement, and either of the following conditions is satisfied:

30 (A) Installments under the policy are not billed more frequently
31 than once per month.

32 (B) If more than one installment is billed in any month, the
33 commissioner determines, in his or her discretion, that the
34 installment billing method used does not unduly burden the
35 commissioner’s ability to accurately determine the amount of
36 premium paid by the insured.